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Dated: January 11, 2005

Signature: 

(Arnold H. Krumholz)

TRADEMARK
NPP 10.2A-124

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Nation/Ruskin, Inc.,	:	
	:	Opposition No. 124,788
Opposer,	:	
	:	Serial No.: 76/062,710
v.	:	
	:	Mark: REAL CLOTH EZ ONES
Nice-Pak Products, Inc.,	:	
	:	
Applicant.	:	
	:	
	X	

**APPLICANT'S MOTION FOR JUDGMENT
BASED ON OPPOSER'S FAILURE TO PROVE ITS CASE**

Applicant, Nice-Pak Products, Inc. ("Applicant") hereby moves pursuant to 37 C.F.R. §2.132(a) and T.B.M.P. §534.02, for dismissal on the basis of Opposer, Nation/Ruskin, Inc.'s ("Opposer") failure to prosecute this opposition proceeding.

On April 20, 2004, the TTAB granted Opposer's consented motion to extend the testimony periods as follows:

Testimony period for party in position of Plaintiff to close	June 22, 2004
Testimony period for party in position of Defendant to close	August 19, 2004
Rebuttal testimony period to close	October 3, 2004

Opposer's testimony period closed in accordance with the above schedule without Opposer taking any testimony or offering any other evidence. Opposer did not even serve any discovery requests during the discovery period. Under these circumstances, Applicant respectfully submits that it should not be required to incur the additional expense or commitment

of time necessary to continue with trial. Dismissal is authorized in these circumstances pursuant to 37 C.F.R. §2.132(a).¹

Although it is noted that the Board generally disfavors default judgment or dismissal, Applicant submits that the Board is justified in enforcing procedural deadlines. See, *Hewlett-Packard Co., v. Olympus, Corp.*, 18 U.S.P.Q. 2d 1710, 1713 (Fed. Cir. 1991). The Opposer brought this action and in so doing, took responsibility for moving it forward in accordance with the trial schedule. See, *Atlanta-Fulton County Zoo, Inc. v. DePalma*, 45 U.S.P.Q. 2d, 1858, 1868 (TTAB 1998). The failure by the Opposer to do that is the Opposer's own fault and Applicant should not suffer as a result.

For the foregoing reasons, Applicant respectfully requests that the Board dismiss the opposition and permit its application to proceed to registration.

Respectfully submitted,

LERNER, DAVID, LITTENBERG,
KRUMHOLZ & MENTLIK, LLP
Attorneys for Applicant,
Nice-Pak Products, Inc.

Dated: 1/11/05

By: 
Arnold H. Krumholz

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¹ Applicant notes that a motion for judgment under 37 C.F.R. §2.132(a) should be filed before the opening of the moving party's testimony period, however, under 37 C.F.R. §2.132(c), the TTAB may in its discretion grant a motion under §2.132(a) even if the motion is filed after the opening of the testimony period of the moving party.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of APPLICANT'S MOTION FOR JUDGMENT
BASED ON OPPOSER'S FAILURE TO PROVE ITS CASE was served on this 11th day of
January, 2005, upon the following counsel of record as follows:

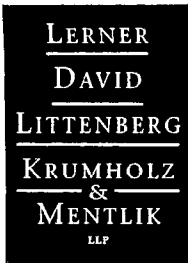
VIA FIRST-CLASS MAIL:

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January 11, 2005

Commissioner for Trademarks
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Re: NPP 10.2A-124
Nation/Ruskin, Inc. v. Nice-Pak Products, Inc.
Opposition No. 91124788

Dear Sir:

In connection with the above-referenced Opposition proceeding, enclosed please find an original and one (1) copy of the following:

1. Applicant's Motion for Judgment Based on Opposer's Failure to Prove its Case; and
2. Certificate of Service.

Kindly provide us with "filed" copies of the enclosed in the stamped, self-addressed envelope provided. The Board's attention to this matter is greatly appreciated.

Sincerely,

LERNER, DAVID, LITTENBERG,
KRUMHOLZ & MENTLIK, LLP

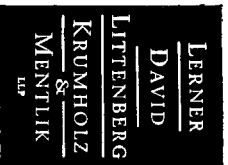
ARNOLD H. KRUMHOLZ

AHK/cbb
Enclosures
cc: Nice-Pak Products, Inc.



01-18-2005

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